IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.592 OF 1982

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. S.K. Bhukari, advocate for the petitioner.
Mr. N.K. Majmudar, advocate for the respondent.

CORAM: Y.B. BHATT J.
Date of Decision: 04-12-1995

JUDGEMENT

1. The present revision is one under section 29(2) of the Bombay Rent Act (hereinafter referred to as 'the said Act'), filed by the original defendant-tenant, wherein the respondent is the original plaintiff-landlord.

2. Before proceeding with the contentions raised in the present revision, it must be kept in mind that the present

revision is one under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the context of the powers of the High Court exercisable in such revisions, the ratio laid down by the Supreme court in the case of Helper Girdharbhai (AIR 1987 SC 1782) is most relevant. In the said decision the Supreme Court has observed in substance that in exercising revisional power under section 29(2) the High Court must ensure that the principles of law have been correctly borne in mind by the lower court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to a miscarriage of justice. But, in the guise of revision, substitution of one view where two views are possible and the Court of Small Causes has taken a particular view, is not permissible. If a possible view has been taken, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant.

2.1 It must also be noted that in the case before the Supreme Court, the findings of the trial court were reversed in appeal, and it was the appellate decision which was before the High Court. The High Court in the revision under section 29(2) reversed the finding. Thus, in the revision before the High Court, it was not a case of concurrent findings of fact.

3. The landlord had filed a suit against the tenant for recovery of possession and arrears of rent, alleging that the tenant was a statutory tenant, that the tenant had made some kachha construction without the permission of the landlord, and was in arrears of rent for more than six months, and therefore, sought a decree for eviction under the relevant provisions of the said Act. The tenant filed his written statement at Exh.11 whereby he challenged the validity of the suit notice, denied that he was in arrears of rent for more than six months, asserted that he had removed the said construction on receiving the suit notice, and further raised a dispute as to standard rent.

4. The trial court framed issues at Exh.12. After recording the evidence and hearing the parties, the trial court came to the conclusion that the tenant was in fact in arrears of rent for a period of exceeding six months, held that the suit notice was legal and valid, held that on the facts of the case the suit of the landlord would be governed by section 12(3)(a) of the said Act, and accordingly passed a

decree for eviction.

5. The appeal filed by the tenant was dismissed by the appellate court by confirming the findings recorded by the trial court. Hence, the present revision.

6. From the facts found on the record of the case and also from the pleadings of the parties, it is not in dispute and/or cannot be disputed that the rent is payable by the month. The trial court as also the lower appellate court found by unimpeachable evidence that the defendant was in fact in arrears of rent for more than six months. It is also an admitted position that the tenant had failed to make payment to the landlord in respect of such arrears within one month of the suit notice. Thus, three of the four essential ingredients of section 12(3)(a) are straightaway satisfied.

7. The only controversy sought to be raised was to the effect that the tenant had raised a dispute as to standard rent in his written statement.

7.1 Both the trial court as also the lower appellate court rightly held, by relying upon the decision of the Supreme Court in the case of HARBANSLAL VS. PRABHUDAS, reported in AIR 1976 SC 2005, that in order to avoid the operation of section 12(3)(a), the tenant must raise a dispute as to standard rent within a period of 30 days of the suit notice, and such a dispute must be raised by filing an application under section 11(3) of the said Act. Merely by taking up a contention in this regard in the written statement would not be sufficient to take the case out of the operation of section 12(3)(a) of the said Act. Furthermore, if section 12(3)(a) applies to the facts of the case, and it is found that the tenant has neglected to make payment of the arrears within 30 days of the suit notice, the Rent Court then has no jurisdiction except to pass a decree for eviction.

8. On the facts of the case both the courts below have found, and it is also an admitted position, that the tenant had not raised any dispute as to standard rent within 30 days of the suit notice, neither had he filed any application under section 11(3) of the said Act. The only manner in which this dispute is raised is by taking up a contention in his written statement. Thus, the facts of the case are squarely covered by the decision of the Supreme Court in the case of Harbanslal (supra).

9. In the premises aforesaid, both the courts below were eminently justified in coming to the conclusion that in view of the provisions of section 12(3)(a), they were bound to pass a decree for eviction.

10. It may be noted here at this stage that the subsequent attempt of the tenant to pay up arrears or to deposit such arrears in the court during the course of the trial and/or appeal, can be of no assistance to the tenant, on an assumption that section 12(3)(b) of the said Act would apply.

10.1 Once it is found that section 12(3)(a) of the said Act applies squarely to the facts of the case, section 12(1) no longer has any overriding effect.

11. In the premises aforesaid, there is no substance in the present revision, and the same must, therefore, be rejected. Accordingly rule is discharged with no order as to costs. Ad interim relief vacated.

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